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Health And Welfare Trust Fund for Northern California, et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OPERATING ENGINEERS' HEALTH AND
WELFARE TRUST FUND FOR NORTHERN
CALIFORNIA; RUSSELL E. BURNS and JAMES
E. MURRAY, Trustees;

PENSION TRUST FUND FOR OPERATING
ENGINEERS; RUSSELL E. BURNS and JAMES E.
MURRAY, Trustees;

PENSIONED OPERATING ENGINEERS'
HEALTH AND WELFARE TRUST FUND;
RUSSELL E. BURNS and JAMES E. MURRAY,
Trustees;

OPERATING ENGINEERS AND PARTICIPATING
EMPLOYERS PRE-APPRENTICE, APPRENTICE
AND JOURNEYMEN AFFIRMATIVE ACTION
TRAINING FUND; RUSSELL E. BURNS and
JAMES E. MURRAY, Trustees;

OPERATING ENGINEERS LOCAL UNION NO. 3
VACATION, HOLIDAY AND SICK PAY TRUST
FUND; RUSSELL E. BURNS and JAMES E.
MURRAY, Trustees; and

OPERATING ENGINEERS LOCAL 3 OF THE
INTERNATIONAL UNION OF OPERATING
ENGINEERS, AFL-CIO,

Plaintiffs,

v.

AECOM, a Delaware corporation,

Case No.

COMPLAINT

Defendant.

Parties

1. The Operating Engineers' Health and Welfare Trust Fund for Northern California (which includes the Addiction Recovery Program, Inc.) ("Health Fund"); Pension Trust Fund for Operating Engineers (which includes the Pension Plan for the Pension Trust Fund for Operating Engineers, the Rehabilitation Plan, and the Operating Engineers Annuity Plan) ("Pension Plan"); Pensioned Operating Engineers' Health and Welfare Trust Fund ("Pensioned Health Fund"); Operating Engineers and Participating Employers Pre-apprentice, Apprentice and Journeymen Affirmative Action Training Fund ("Affirmative Action Training Fund"); and the Operating Engineers Local Union No. 3 Vacation, Holiday and Sick Pay Trust Fund ("Vacation Fund") (collectively referred to hereinafter as the "Trust Funds"), are employee benefit plans as defined in the Employee Retirement Income Security Act of 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3). Russell E. Burns and James E. Murray are Co-Chairmen of the Joint Boards of Trustees of the Health Fund, Pension Fund, Pensioned Health Fund, and Affirmative Action Training Fund and have authority to act on behalf of all Trustees of those Funds. Russell E. Burns and James E. Murray are Co-Chairmen of the Joint Boards of Trustees of the Vacation Fund and have authority to act on behalf of all Trustees of the Vacation Fund. The Trust Funds and their fiduciaries are together referred to herein as "ERISA Plaintiffs" or "Plaintiffs."

2. Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO ("Union") is a labor organization as defined in § 2(5) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 152(5), and is represented by counsel herein for the limited purpose of collecting union dues owing as part of the subject contribution claims of Plaintiffs, and not for any other cause of action. The Union expressly reserves its rights to pursue any other cause of action on its own behalf.

3. AECOM, a Delaware corporation, ("Defendant") is an employer by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

Jurisdiction

4. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of

1 ERISA § 502, 29 U.S.C. § 1132, in that Plaintiffs seek to enforce the provisions of ERISA and the terms
2 of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief to redress
3 such violations, and seek all other appropriate relief under ERISA.

4 5. Jurisdiction exists in this Court over all the claims by virtue of LMRA § 301, 29 U.S.C. §
5 185, in that Plaintiffs seek to enforce the terms and conditions of a valid Bargaining Agreement.

6 6. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA,
7 supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they
8 arise out of a common nucleus of operative facts that form the basis of the federal claims asserted
9 herein, each of which has a substantial ground in federal jurisdiction.

10 Venue

11 7. Venue is conferred upon this Court by ERISA § 502, 29 U.S.C. § 1132. Where an action
12 is brought under ERISA § 502 in a district court of the United States, it may be brought at Plaintiffs'
13 discretion, in the district where the plan is administered, where the breach took place, or where a
14 defendant resides or may be found, and process may be served in any other district where a defendant
15 resides or may be found. ERISA Plaintiffs' Trust Funds are administered in this district at their principal
16 place of business in Alameda, California. Thus, jurisdiction and venue are properly grounded with this
17 Court.

18 8. Venue exists in this Court with respect to the claims under LMRA § 301(a), 29 U.S.C. §
19 185, as this Court has jurisdiction over the parties, as the Union maintains its principal place of business
20 in this district, its duly authorized officers or agents are engaged in representing employee members in
21 this district, and the claims arise in this district.

22 Intradistrict Assignment

23 9. The basis for assignment of this action to this Court's Oakland Division is that all of the
24 events and omissions giving rise to Plaintiffs' claims occurred in the County of Alameda, where ERISA
25 Plaintiffs' Funds and the Bargained Plans are administered, and where Defendant therefore failed to
26 fulfill its statutory and contractual obligations to Plaintiffs.

27 Bargaining Agreement

28 10. Defendant is a signatory to two collective bargaining agreements known as "Master

1 Agreements.” One Master Agreement is between the Union and the California & Nevada Civil
2 Engineers and Land Surveyors Association, Inc. and the other is between the Union and the Council of
3 Engineers and Laboratory Employees Both Master Agreements are referred to collectively herein as
4 “Bargaining Agreements.” The Bargaining Agreements, which incorporate the terms of the Trust
5 Agreements establishing the Trust Funds (“Trust Agreements”), require Defendant to provide employer
6 contributions to Plaintiffs’ Trust Funds, to the Union for union dues, and to other plans more fully
7 described in the Bargaining Agreements. ERISA Plaintiffs are third-party beneficiaries of the
8 Bargaining Agreements.

9 11. Under the terms of the Bargaining Agreement, and Trust Agreements incorporated
10 therein, Defendant is required to pay certain contributions to the Health Fund; Pension Plan; Pensioned
11 Health Fund; Funding Improvement Plan; Operating Engineers Annuity Fund; Vacation Fund;
12 Affirmative Action Training Fund; Operating Engineers Industry Stabilization Trust Fund; Job
13 Placement Center and Market Area Committee Market Preservation Fund; and Contract Administration
14 Fund, (together referred herein as “Bargained Plans”). Plaintiffs’ Boards of Trustees are assigned under
15 the Bargaining Agreements to receive and administer monies due to these Bargained Plans.

16 12. Under the Bargaining Agreement and Trust Agreements, which are incorporated into the
17 Bargaining Agreement and made binding on Defendant, Defendant is required to regularly pay to
18 ERISA Plaintiffs, the Bargained Plans, and the Union, certain sums of money, the amounts of which are
19 determined by the hours worked by Defendant’s employees. Contributions are due on the fifteenth
20 (15th) day of the month following the month in which hours were worked, and are considered
21 delinquent if not received by the twenty-fifth (25th) day of that month. Defendant is also required,
22 pursuant to the Bargaining and Trust Agreements, to pay liquidated damages in the amount of ten
23 percent (10%) for each delinquent contribution, but in the amount of twenty percent (20%) for each
24 delinquent contribution which is the subject of litigation. Moreover, the Bargaining and Trust
25 Agreements provide that interest accrues on delinquent contributions at the rates reasonably set by the
26 Trustees from the date they become delinquent, which is the twenty-sixth (26th) day of the month in
27 which payment was due, until paid in full.

28 13. The Bargaining and Trust Agreements further require Defendant to maintain time records

or time cards, and to permit an authorized Trust Fund representative to examine such records of Defendant as are necessary to determine whether Defendant has made full payment of all sums owed to ERISA Plaintiffs. Should an audit of Defendant's records reveal Defendant has failed to provide full and prompt payment of all sums due to Plaintiffs, Defendant must reimburse Plaintiffs for the amounts due, including audit fees, in addition to any other obligations pursuant to the Bargaining and Trust Agreements.

Factual Allegations

14. Defendant has failed and refused to pay amounts found due to Plaintiffs as a result of an audit of Defendant's payroll records for the period from January 1, 2014 through December 31, 2016. Liquidated damages and interest have been incurred and are owed to Plaintiffs for the unpaid contributions for that period.

15. Defendant has also failed to pay contributions it reported due for hours worked by its employees for the month of December 2015. Liquidated damages and interest have been incurred and are owed to Plaintiffs for the unpaid contributions for December 2015. Defendant has also failed to report and pay contributions for hours worked by its employees for the months of June 2017 through the present. Liquidated damages and interest have been incurred and are owed to Plaintiffs for the unpaid contributions for these periods.

16. Plaintiffs are also entitled to recover any and all other contributions, and all liquidated damages and interest on delinquent contributions not specified above, found due on timecards, audit, or otherwise, including estimated contributions for any months Defendant fails to report to Plaintiffs, through the time of Judgment. Plaintiffs reserve the right to conduct a further audit to determine whether there are any additional amounts due from Defendant.

FIRST CAUSE OF ACTION For Payment of Delinquent Contributions, Interest, Liquidated Damages, Attorneys' Fees and Costs Against Defendant

17. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 16, above.

18. Defendant has a contractual duty to timely pay the required contributions to Plaintiffs and the Bargained Plans, and to timely pay dues to the Union, pursuant to the Bargaining Agreement and Trust Agreements. Defendant also has a contractual duty under the Bargaining Agreement and Trust

1 Agreements to permit an audit of its records to determine whether it is making full and prompt payment
2 of all sums required to be paid by it to Plaintiffs, and to pay Plaintiffs all amounts found due as a result
3 of an audit, including audit fees.

4 19. In addition, Defendant has a statutory duty to timely make the required payments to
5 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

6 20. By failing to make the required payments to Plaintiffs, Defendant breached the
7 Bargaining and Trust Agreements and is in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA §
8 301(a).

9 21. Defendant's failure and refusal to pay the required contributions was at all times, and still
10 is, willful. Defendant continues to breach the Bargaining Agreement, and incorporated Trust
11 Agreements, by failing to pay all amounts owed as alleged. Said refusal is unjustified and done with
12 knowledge and intent.

13 22. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and
14 irreparable injury, loss and damage unless Defendant is ordered specifically to perform all obligations
15 required on Defendant's part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29
16 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and are restrained from continuing to
17 refuse to perform as required thereunder.

18 23. This Court is authorized to issue injunctive relief based on the traditional standard. As set
19 forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility
20 that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of
21 hardships and advancement of public interest favor ERISA Plaintiffs.

22 24. This Complaint does not in any manner relate to statutory withdrawal liability that may or
23 may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to pursue any such
24 withdrawal liability claims against Defendant as provided by ERISA Plaintiffs' Plan Documents, Trust
25 Agreements, and the law.

26 Prayer

27 WHEREFORE, Plaintiffs pray as follows:

28 1. For a judgment against Defendant as follows:

(a) Any unpaid contributions, due at time of Judgment, including those specified above as well as any other contributions determined as due by audit, timecards, or otherwise, including estimated contributions for any months Defendant fails to report to Plaintiffs, pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

i. To ERISA Plaintiffs and the Bargained Plans, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreement;

ii. To the Union in accordance with the Bargaining Agreement.

(b) Liquidated damages on all late-paid and unpaid contributions in an amount provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

(c) Interest on all late-paid and unpaid contributions at the rates set in accordance with the Bargaining Agreement, the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. § 1132(g)(2)(B).

2. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance with the Bargaining Agreement for all Bargained Plans; and with LMRA § 301, 29 U.S.C. § 185, for all Plaintiffs.

3. For an order,

(a) requiring that Defendant comply with its obligations to Plaintiffs under the terms of the Bargaining Agreement and the Trust Agreements;

(b) enjoining Defendant from violating the terms of those documents and of ERISA; and

(c) enjoining Defendant from disposing of any assets until said terms have been complied with, and from continuation or operation of Defendant's business until said terms have been complied with.

4. That the Court retain jurisdiction of this case pending compliance with its orders.

5. For such other and further relief as the Court may deem just and proper.

DATED: December 5, 2018

SALTZMAN & JOHNSON LAW CORPORATION

By: _____/S/

Matthew P. Minser

Attorneys for Operating Engineers' Health And
Welfare Trust Fund, et al.